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TRANSMITTAL FORM

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Total Number of Pages in This Submission	19

Application Number	09/925,685
Filing Date	08/09/2001
First Named Inventor	Lane Thomas Holloway
Art Unit	2178
Examiner Name	Manglesh M. Patel
Attorney Docket Number	AUS920010253US1

ENCLOSURES *(Check all that apply)*

- [x] Fee Transmittal Form
  - [x] Fee Attached
- [ ] Amendment/Reply
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Firm Name	Law Office of Anthony England		
Signature	Anthony V.S. England		
Printed name	Anthony V.S. England		
Date	6-27-2006	Reg. No.	35,129

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Application Number	09/925,585
Filing Date	08/09/2001
First Named Inventor	Lane Thomas Holloway
Art Unit	2178
Examiner Name	Mangiesh M. Patel
Attorney Docket Number	AUS920010253US1

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§ 1.48 - for correcting inventorship, except in provisional applications.
§ 1.52(d) - for processing a nonprovisional application filed with a specification in a language other than English.
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§ 3.81 - for a patent to issue to assignee, assignment submitted after payment of the issue fee.

Anthony V.S. England
Signature

6/27/2006
Date

Anthony V.S. England
Typed or printed name

35,129
Registration No., if applicable

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JUN 27 2006

Docket AUS920010253US1

Appl. No.: 09/925,585
Filing Date: 08/09/2001

In the United States Patent and Trademark Office

In re the application of: Lane Thomas Holloway		
Filed: 08/09/2001	Group Art Unit:	2178
For: Method, Apparatus and Computer Program Product for Interactive Surveying	Examiner:	Manglesh M. Patel
Application No. 09/925,585		
Appellant's Docket: AUS920010253US1		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

REAL PARTY IN INTEREST

The assignee, International Business Machines Corporation, is the real party in interest.

RELATED APPEALS AND INTERFERENCES

This is the first appeal in the present patent application. There are no other appeals or interferences known to the appellant or its legal representative. International Business Machines Corporation is the sole assignee of the patent application.

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STATUS OF CLAIMS

Claims 1, 4-7, 8, 11-15, and 18-21 are pending in the application.

The claims appealed herein, and for which arguments are herein presented, are claims 1, 8 and 15. (Arguments are *not* herein presented regarding claims 4-7, 11-14, and 18-21. However, Appellant contends, of course, that these claims are allowable since they depend on claims for which arguments are herein presented and which Appellant contends are allowable.)

All the pending claims stand rejected. Office action (the "Final Office Action"), January 27, 2006. Appellant has appealed from the final rejection. Notice of Appeal, sent by facsimile transmission to the USPTO on April 27, 2006.

History of the Case

Claims 1-21 were originally submitted. A first Office action of August 10, 2005, rejected all claims under 35 USC 103(a) as being unpatentable over certain prior art and rejected claims 1-14 under 35 USC 101 as being directed to non-statutory subject matter.

Appellant filed Reply A on November 10, 2005, responsively amended claims 1, 4, 5, 7, 8, 11, 12, 14, 15, and 18-21 to overcome the rejections. Appellant also canceled claims 2, 3, 9, 10, 16, and 17.

The Final Office action withdrew the rejections under 35 USC 101 and finally rejected all claims under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application 2002/0029154 ("Majoor"), U.S. Patent Application 2002/0184265 ("Gupta"), U.S. Patent 5,893,098 ("Peters ") and U.S. Patent 6,826,540 ("Plantec").

STATUS OF AMENDMENTS

There are no amendments in connection with this appeal and none were submitted subsequent to the Final Office Action. The claims in the Claim Appendix herein set out the claims as amended in Appellant's Reply A of November 10, 2005, which was prior to the Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1

Summarizing claim 1, the claimed invention concerns a method for generating a survey for a computer system on a network. The claim states, in a first general aspect, that a first computer stores, for delivery to a second computer, a survey document for presenting questions to the second computer's user. In a second general aspect, the first computer stores instructions for the second computer to parse the document and branch to next questions responsive to answers the user enters. Thirdly, the survey document has data elements with certain particularly claimed formatting attributes. In a final aspect of claim 1, the parsing includes the second computer parsing the data elements into data arrays defining associations among questions and answers.

More specifically, regarding the first general aspect claim 1 particularly states that a method for generating a survey for a computer system on a network includes a first step of ". . . storing a survey document on . . . a first computer system . . . having questions and answers . . . for delivery over a network to a second computer system and for presenting ones of the survey document questions and answers for selecting by a user of the second computer . . ." Present application, FIG. 1 and page 5 , lines 6-17 (regarding first computer 110, second computer 150, storage unit 115); page 6 , lines 6-15 (regarding extensible markup language ("XML") document 133 survey having questions and answers in a certain format for delivery over a network to a second computer system); FIG. 8 and page 10 , line 20 - page 11, line 17 (regarding presenting ones of the survey document questions and answers for selecting by a user of the second computer).

Regarding the second general aspect, claim 1 more specifically states that the method includes a second step of "storing programming instructions . . . of the first computer system . . . for delivery over the network to the second computer system," where the programming instructions include "instructions for causing the second computer system to parse the data elements from the survey document into data arrays having cross-references." Present application, page 5 , line 18 - page 6, line 5, and page 6, lines 17-19, FIG. 3, FIG. 8, and page 10, line 20 - page 11, line 7 (regarding instructions for causing the second computer system to

parse the data elements from the survey document into data arrays having cross-references defining the associations among questions and answers).

Also regarding this second aspect, claim 1 particularly points out that the programming instructions, which are stored on the first computer for delivery to the second computer, include "instructions for causing the second computer system to parse the data elements from the survey document into data arrays having cross-references defining the associations among questions and answers, and instructions for causing the second computer system to display on a user interface certain ones of the questions, including the first one of the questions, and branch to and display on the user interface the second and third ones of the questions, or else not branch to and display the second and third ones of the questions, responsive to an answer selected by the user and received by the second computer system for the first question and responsive to ones of the cross-references defining the associations among the first, second and third one of the questions." Present application, page 11 , lines 8-18, and FIG's 3-7, page 8, line 15 - page 10, line 19, FIG. 8, and page 11, lines 8-18 (regarding instructions for causing the second computer system to display on a user interface certain ones of the questions, including the first one of the questions, and branch to and display on the user interface the second and third ones of the questions, or else not branch to and display the second and third ones of the questions, responsive to an answer selected by the user and received by the second computer system for the first question and responsive to ones of the cross-references defining the associations among the first, second and third one of the questions).

Regarding the third aspect, claim 1 specifically states that "the questions and answers are defined as data elements included in the survey document as strings of text surrounded by text markups, wherein the data elements include tags describing the data elements and attributes defining associations among the questions and answers, including associations such that ones of the questions branch from ones of the answers . . ." Present application, page 6, lines 6-15.

Regarding the final aspect of claim 1, the parsing includes the second computer parsing the data elements into data arrays defining associations among questions and answers.

Present application, page 6, lines 17-19; FIG. 3 and page 8, line 15 - page 9, line 6; and FIG. 8 and page 10, line 20 - page 11, line 17.

Claim 8

Claim 8 is directed to a computer program product for generating a survey for a first computer system on a network, and has language very similar to claim 1. According to claim 8, the computer program product includes a survey document on a computer-readable medium and a programming instructions on a computer-readable medium. Present application, page 11, line 18 - page 12, line 1 (regarding examples of computer-readable storage medium). As in claim 1, the programming instructions are for a second computer to parse the document and branch to next questions responsive to answers the user enters and the survey document has data elements with certain particularly claimed formatting attributes. Also as in claim 1, the parsing includes the computer parsing the data elements into data arrays defining associations among questions and answers. Detailed aspects of the survey document and programming instructions are set out in claim 8 in the same fashion as claim 1, described herein above.

Claim 15

Claim 15 is directed to a computer system that includes a processor for connecting to a network and a storage device coupled to the processor. Present application, FIG. 1 and page 5, lines 6-17 (regarding server computer 110, storage unit 115 and CPU's 106). The storage device has a computer-readable medium for storing a survey document and programming instructions. See description of claim 8 above regarding computer-readable medium and description of claim 1 above regarding a survey document and programming instructions.

As in claim 1, the programming instructions are for a second computer to parse the document and branch to next questions responsive to answers the user enters and the survey document has data elements with certain particularly claimed formatting attributes. Also as in claim 1, the parsing includes the computer parsing the data elements into data arrays defining associations among questions and answers. Detailed aspects of the survey document and programming instructions are set out in claim 15 in the same fashion as claim 1, described herein above.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Are claims 1, 8 and 15 patentable over Majoor, in view of Gupta, in view of Plantec, in view of Peters?

ARGUMENTS

Claims 1, 8, and 15

Issue One: Plantec does not teach or suggest, "including instructions for causing the second computer system to parse the data elements from the survey document into data arrays having cross-references defining the associations among questions and answers," as claimed.

The Office action relies upon Plantec for teaching about parsing. Plantec does concern conducting surveys and compiling results. See Plantec FIG. 1. However, Plantec teaches parsing of data elements into arrays is done *by a results server* in the process of receiving an answer file and associating answers therein with questions in a survey database. Plantec, col. 38, lines 33-48. By contrast, as stated in claim 1 of the present case, the parsing and associating is done *by the computer that receives the survey and presents it to a user*. (Claim 1 in the present application states that the program instructions are "for causing the second computer system to parse the data elements from the survey document into data arrays having cross-references defining the associations among questions and answers" and that they also include "instructions for causing the second computer system to display on a user interface certain ones of the questions . . . and branch to . . . or else not branch . . . responsive to an answer selected by the user . . . and responsive to ones of the cross-references defining the associations among . . . the questions." Claims 8 and 15 have similar language.)
Claims 8 and 15 have similar language. Thus, Plantec does not teach or suggest what is claimed.

Issue Two: No proper motivation has been shown for combining the references.

A. The proposed combination of Gupta with the other references changes the principle of operation of Gupta.

The combination posited must present a prima facie case of obviousness. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. MPEP 2143.01 (citing In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)).

Gupta teaches about questions and answers stored in a markup language format. Gupta, para. 19. However, Gupta teaches that the questions and answers are for a program that generates tests by randomly selecting questions and that generates corresponding written answer keys. See, e.g., Gupta, para. 5-6 and FIG. 1. Thus Gupta teaches that the program generates *answers responsive to questions* and also that *the program randomly selects the questions*. By contrast, claim 1 in the present application states that a program has "instructions for causing the second computer system to display on a user interface certain ones of the questions . . . and branch to . . . or else not branch . . . responsive to an answer selected by the user . . . and responsive to ones of the cross-references defining the associations among . . . the questions." In other words, the present application states that the program generates *questions responsive to answers* and that *a user selects the answers.*

It should be understood, therefore, that in contrast to what is claimed in the present application Gupta does not teach selecting and presenting questions responsive to *user selected answers*, nor that a program generates *questions responsive to answers*, nor that *a user selects the answers*. Nevertheless, the rejection relies upon combining Gupta with teaching from Peters regarding associations such that ones of the questions branch from ones of the answers. Thus the principle of operation of Gupta must be changed in order to combine the teachings. Therefore, the teachings of the references are not sufficient to render the claims prima facie obvious.

B. The proposed combination of Majoor with the other references changes the principle of operation of Majoor.

The Office action relies upon Majoor for teaching about storing a survey document having questions and answers on a first computer for delivery to a second computer. In Majoor, a first computer analyzes answers sent back from a second computer and selects and sends next questions to the second computer responsive to those received answers. Majoor, para. 16-17. By contrast, claim 1 in the present application states that a program has "instructions for causing the second computer system to display on a user interface certain ones of the questions . . . and branch to . . . or else not branch . . . responsive to an answer selected by the user . . . and responsive to ones of the cross-references defining the associations among . . . the questions." (Claims 8 and 15 have similar language.) In other words, the claims in the present application state that the second computer analyzes answers received from a user and presents next questions to the second computer responsive to those received answers. This is contrary to intervention by the first computer between questions and answers. The rejection relies on Peters for this teaching. Thus the principle of operation of Majoor must be changed in order to combine its teaching with that of Peters. Therefore, the teachings of the references are not sufficient to render the claims prima facie obvious.

C. Majoor teaches away from the present invention, as claimed.

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Majoor does concern survey documents, but teaches that a first computer analyzes answers sent back from a second computer and selects and sends next questions to the second computer responsive to those received answers. Majoor, para. 16-17. As pointed out herein above, the claims in the present application state that the second computer analyzes answers received from a user and presents next questions to the second computer responsive to those received answers, which is contrary to intervention by the first computer between questions and answers. Thus Majoor teaches away from what is claimed in the present application, and the combination is not proper.

D. No objective reason or specific understanding or principle within the knowledge of the skilled artisan taught by the cited references has provided a motivation to combine their teachings.

It is important to rely on objective evidence and make specific factual findings with respect to the motivation to combine references. MPEP 2143.01 (citing *In re Lee,* 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002). "There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." MPEP 2143.01 (citing *In re Rouffet,* 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998)). Regarding the teachings of the prior art, the teachings must do more than merely show all aspects of the claimed invention were individually known in the art. MPEP 2143.01 (citing *Ex parte Levengood,* 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993), and indicating there must be an objective reason to combine the teachings of the references). Regarding the nature of the problem to be solved, such motivation might exist in the nature of the problem to be solved if each reference is directed "to precisely the same problem." MPEP 2143.01 (citing In *Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, at 1276 (Fed. Cir. 2004)). Regarding the knowledge of persons of ordinary skill in the art, it has been held that without a finding about a "specific understanding or principle within the knowledge of the skilled artisan" that would have provided a motivation combine the teachings, alleged knowledge of persons of ordinary skill in the art provided no motivation to combine. MPEP 2143.01 (citing *In re Kotzab,* 217 F.3d 1365, at 1370-1371, (Fed. Cir. 2000)).

It is unclear which source of motivation the Office action contends is applicable to the posited combination of the references. Certainly, all the references relied upon are not directed to precisely the same problem as that of the present invention. The Office action cites no objective reason or specific understanding or principle within the knowledge of the skilled artisan taught by the cited references that would have provided a motivation to combine their teachings. The cited references merely show that certain limited aspects, but not all aspects, of the claimed invention were individually known in the art, and do not provide objective reasons for combining their teachings.

REQUEST FOR ACTION

For the above reasons, Appellant contends the invention defined in claims 1, 8 and 15 is patentably distinct. Further, claims 4-7, 11-14, and 18-21 are allowable at least because they depend on respectively allowable independent claims. MPEP 2143.03 ("If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious," citing *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988)). Appellant requests that Examiner grant allowance and prompt passage of the application to issuance.

Respectfully submitted,

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Attachments: Claims Appendix, Evidence Appendix, Related Proceedings Appendix

APPENDIX "AA" CLAIMS

1. (previously presented) A method for generating a survey for a computer system on a network, the method comprising the steps of:

storing a survey document on a computer-readable medium of a first computer system, the survey document having questions and answers in a certain format for delivery over a network to a second computer system and for presenting ones of the survey document questions and answers for selecting by a user of the second computer, wherein according to the certain format of the survey document, the questions and answers are defined as data elements included in the survey document as strings of text surrounded by text markups, including tags describing the data elements and attributes defining associations among the questions and answers, including associations such that ones of the questions branch from ones of the answers; and

storing programming instructions on a computer-readable medium of the first computer system, the programming instructions being for delivery over the network to the second computer system, including instructions for causing the second computer system to parse the data elements from the survey document into data arrays having cross-references defining the associations among questions and answers, and instructions for causing the second computer system to display on a user interface certain ones of the questions, including the first one of the questions, and branch to and display on the user interface the second and third ones of the questions, or else not branch to and display the second and third ones of the questions, responsive to an answer selected by the user and received by the second computer system for the first question and responsive to ones of the cross-references defining the associations among the first, second and third one of the questions.

2-3. (canceled)

4. (previously presented) The method of claim 2, comprising the step of:

storing a data type definition file on a computer-readable medium of a first computer system, the data type definition file being for delivery over the network to the second computer system, wherein the programming instructions include instructions for causing the

APPENDIX "AA" CLAIMS

second computer system to validate the data elements responsive to the document type definition file.

5. (previously presented) The method of claim 4, wherein the programming instructions are included in a document that includes information for displaying by a browser running on the second computer system and directions for how the browser should display the information, and the programming instructions include instructions in an object oriented, interpreted, dynamic programming language.

6. (original) The method of claim 5 wherein the programming language includes Java.

7. (previously presented) The method of claim 1, wherein the programming instructions include instructions for causing the second computer system to return survey results to the first computer system as a document defining the answers as data elements included in the survey document as strings of text surrounded by text markups, including tags, wherein the text markups describe the data elements.

8. (previously presented) A computer program product for generating a survey for a first computer system on a network, the computer program product comprising:

a survey document on a computer-readable medium for delivery to the computer system on the network, the survey document having questions and answers in a certain format for presenting ones of the survey document questions and answers for selecting by a user of a computer, wherein according to the certain format of the survey document, the questions and answers are defined as data elements included in the survey document as strings of text surrounded by text markups, including tags describing the data elements and attributes defining associations among the questions and answers, including associations such that ones of the questions branch from ones of the answers; and

programming instructions on a computer-readable medium including instructions for delivery to the computer system on the network, the programming instructions including

APPENDIX "AA" CLAIMS

instructions for causing the computer system to parse the data elements from the survey document into data arrays having cross-references defining the associations among questions and answers, and instructions for causing the computer system to display on a user interface certain ones of the questions, including the first one of the questions, and branch to and display on the user interface the second and third ones of the questions, or else not branch to and display the second and third ones of the questions, responsive to an answer selected by the user and received by the computer system for the first question and responsive to ones of the cross-references defining the associations among the first, second and third one of the questions.

9-10. (canceled)

11. (previously presented) The computer program product of claim 9, wherein the programming instructions include instructions for causing the second computer system to validate the data elements responsive to a document type definition file.

12. (previously presented) The computer program product of claim 11, wherein the programming instructions are included in a document that includes information for displaying by a browser running on the second computer system and directions for how the browser should display the information, and the programming instructions include instructions in an object oriented, interpreted, dynamic programming language.

13. (original) The computer program product of claim 12 wherein the programming language includes Java.

14. (previously presented) The computer program product of claim 8, wherein the programming instructions include instructions for causing the second computer system to return survey results to the first computer system as a document defining the answers as data

APPENDIX "AA" CLAIMS

elements included in the survey document as strings of text surrounded by text markups, including tags, wherein the text markups describe the data elements.

15. (previously presented) A first computer system comprising:

a processor for connecting to a network;

a storage device coupled to the processor, wherein the storage device has a computer-readable medium for storing:

a survey document for delivery to a second computer system on the network, the survey document having questions and answers in a certain format for presenting ones of the survey document questions and answers for selecting by a user of the second computer, wherein according to the certain format of the survey document, the questions and answers are defined as data elements included in the survey document as strings of text surrounded by text markups, including tags describing the data elements and attributes defining associations among the questions and answers, including associations such that ones of the questions branch from ones of the answers; and

programming instructions, including instructions for causing the second computer system to parse the data elements from the survey document into data arrays having cross-references defining the associations among questions and answers, and instructions for causing the second computer system to display on a user interface certain ones of the questions, including the first one of the questions, and branch to and display on the user interface the second and third ones of the questions, or else not branch to and display the second and third ones of the questions, responsive to an answer selected by the user and received by the second computer system for the first question and responsive to ones of the cross-references defining the associations among the first, second and third one of the questions.

16-17. (canceled)

APPENDIX "AA" CLAIMS

18. (previously presented) The first computer system of claim 17, wherein the programming instructions include instructions for causing the second computer system to validate the data elements responsive to a document type definition file.

19. (previously presented) The first computer system of claim 18, wherein the programming instructions are included in a document that includes information for displaying by a browser running on the second computer system and directions for how the browser should display the information, and the instructions include instructions in an object oriented, interpreted, dynamic programming language.

20. (previously presented) The first computer system of claim 19 wherein the programming language includes Java.

21. (previously presented) The first computer system of claim 15, wherein the programming instructions include instructions for causing the second computer system to return survey results to the first computer system as a document defining the answers as data elements included in the survey document as strings of text surrounded by text markups, including tags, wherein the text markups describe the data elements.

APPENDIX "BB" EVIDENCE

NONE.

APPENDIX "CC" RELATED PROCEEDINGS

NONE.